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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GEMMA RIVERA and MARISA FRANZ,
individually and on behalf of all others similarly
situated,

Plaintiffs,

V.

KNIX WEAR, INC.

Defendant.

Case No. 5:22-cv-02137-EJD

**NOTICE OF MOTION AND MOTION TO
CONDITIONALLY WITHDRAW AS
COUNSEL FOR PLAINTIFF GEMMA
RIVERA; MEMORANDUM OF POINTS
AND AUTHORITIES**

Date: May 11, 2023

Time: 9:00 a.m.

Judge: Hon. Edward J. Davila

Courtroom: 4

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT on May 11, 2023 at 9:00 a.m., or as soon thereafter as may be heard in Courtroom 4 before the Honorable Judge Edward J. Davila, located at the Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, San Jose, California, 95113, Burson & Fisher, P.A. will and hereby does move the Court to conditionally withdraw as counsel of record for Plaintiff Gemma Rivera.

This Motion is made pursuant to Local Rule 11-5 and the California Rules of Professional Conduct 1.16(a)(4). This Motion is based upon this Notice of Motion, the following Memorandum of Points and Authorities, and the Declaration of L. Timothy Fisher filed herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Bursor & Fisher, P.A. (“Counsel”), counsel of record for Plaintiff Gemma Rivera (“Ms. Rivera”), respectfully requests leave to conditionally withdraw as counsel for Ms. Rivera pursuant to California Rules of Professional Conduct 1.16(a)(4) and Local Rule 11-5.

II. STATEMENT OF FACTS

Ms. Rivera is currently represented by Bursor & Fisher, P.A. in this matter. On March 15, 2023, Ms. Rivera terminated Bursor & Fisher, P.A. as her counsel. *Id.* ¶ 2. As of the date of this application, Ms. Rivera has not retained new counsel. *Id.* ¶ 2. Since Ms. Rivera terminated representation, Bursor & Fisher, P.A. has forwarded all orders and notices to Ms. Rivera. *Id.* ¶ 3. Per Local Rule 11-5(b), Bursor & Fisher, P.A. will continue to do so until Ms. Rivera is represented by new counsel.

III. ARGUMENT

Under California Rule of Professional Conduct 1.16(a)(4), “a lawyer shall withdraw from representation of a client if: ... the client discharges the lawyer.” An attorney may withdraw from a case after obtaining an order from the Court after written notice has been given in advance to the client and all other parties appearing in the case. Civ. L.R. 11-5(a).

“The decision to grant or deny counsel’s motion to withdraw is committed to the discretion of the trial court.” *Kannan v. Apple Inc.*, 2020 WL 75942, at *1 (N.D. Cal. Jan. 7, 2020) (citation omitted); *Marcus v. ABC Signature Studios, Inc.*, 2017 WL 5635020, at *1 (C.D. Cal. June 7, 2017) (citing *United States v. Carter*, 560 F.3d 1107, 1113 (9th Cir. 2009)). “A client has an absolute right to discharge an attorney at any time, with or without cause.” *Oracle America, Inc. v. Service Key, LLC*, 2013 WL 1195620, at *2 (N.D. Cal. March 22, 2013) (citing *Francasse v. Brent*, 6 Cal. 3d 784, 790 (1972)).

Bursor & Fisher, P.A. respectfully requests that the Court grant this motion as Ms. Rivera discharged the firm as her counsel in this matter on March 15, 2023. *See* Fisher Decl. ¶ 2. However, because this motion is not accompanied by a substitution of counsel, Bursor & Fisher, P.A. agrees to continue to serve Ms. Rivera with all papers in this matter until Ms. Rivera retains new counsel that has appeared in this action. *Id.* ¶ 3.

IV. CONCLUSION

Bursor & Fisher, P.A. respectfully requests that the Court enter an order permitting the firm to conditionally withdraw as counsel for Ms. Rivera.

Dated: April 11, 2023

BURSOR & FISHER, P.A.

By: /s/ L. Timothy Fisher

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